IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2827 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAMUBEN WIDOW OF VAGHABHAI CHHELABHAI

Versus

RAMUBHAI POPATBHAI BHARAVAD

Appearance:

MR PJ VYAS for Petitioner

MR DC DAVE for Respondent No. 1

Respondents nos. 2,3,4 & 5 - SERVED

Ms KATHA GAJJAR AGP for Respondent No. 6

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/02/2002

ORAL JUDGEMENT

This petition, preferred under Article 227 of the Constitution, is directed against the judgment and order

dated 19th February, 2001 passed by the learned Gujarat Revenue Tribunal [hereinafter referred to as, `the Tribunal'] in Revision Application No. TEN.B.A 344 of 2000.

The subject matter of dispute is the lands bearing Survey no. 160 & Survey No. 162, situated at Saijpur Bogha, Taluka-City, Ahmedabad [hereinafter referred to as, `the said lands']. The respondents nos. 2 to 5 are the owners of the said lands and the petitioner claims to be a tenant for over a period of 40 years. However, the respondent no. 1 on 17th November, 1994 made an application under section 70 (b) of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act'] to the Mamlatdar & ALT, Ahmedabad. The same was registered as Tenancy Case No. 305 of 1994. The respondent no. 1 claimed to be a concealed tenant in land survey no. 160. Though the petitioner was a tenant for 40 years, she was not impleaded in the said proceedings. The Mamlatdar & ALT under his order dated 30th November, 1996 allowed the said claim and declared that the respondent no. 1 was the tenant in the said land survey no. 160 and determined the purchase price thereof. Unaware of the said order, the petitioner challenged the same after some three years before the Deputy Collector [Land Reforms (Appeal)], Ahmedabad in Tenancy Appeal No. 49 of 1999. The said appeal was dismissed by the Deputy Collector on 29th September, 1999. Feeling aggrieved, the petitioner preferred above referred Revision Application No. 344 of 2000 before the Tribunal. The said Revision Application was also time barred by some nine months. The petitioner, therefore, applied for condonation of the said delay. The petitioner stated that the impugned order dated 29th September, 1999 made by the Deputy Collector was not served upon her. However, she caused an inquiry to be made in the office of the Deputy Collector on 25th August, 2000 and learnt that the appeal was dismissed on 29th September, 1999. She, therefore, applied for certified copy on the same day and after receiving the certified copy, challenged the order before the Revenue Tribunal. Thus, the delay in question was caused on account of the reasons beyond the control of the petitioner. She was not indolent in pursuing the remedy available to her nor she had given up her right to prefer revision application. The learned Tribunal, however, did not believe the statement of the petitioner. The Tribunal, under the impugned order dated 19th February, 2001 reasoned that, `the Deputy Collector has sent intimation to her at the address given in the appeal memo and when one party has received the intimation I do

not see any reason to question how other party has not received the same.' The Tribunal, therefore, dismissed the Revision Application. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Vyas has submitted that there was no reason for the Tribunal for not believing the statement made by the petitioner. The order declaring the respondent no. 1 as a tenant was made by the Mamlatdar & ALT in absence of the petitioner. The petitioner having learnt about it had challenged the same before the Deputy Collector. The petitioner, therefore, had no reason not to challenge the order of the Deputy Collector, even if it were served upon the petitioner. In support of his contention, he has relied upon the judgment of this Court in the matters of Karim Abdulla v. Heirs of deceased Bai Hoorbai Jama & Ors., [16 GLR 835] and of Chhaga Ramabhai & Ors. vs. Heirs of Chhotabhai & Anr., [1994 (1) GLH 16].

Learned advocate Mr. D.C Dave has contested the petition. He has submitted that even if the delay were condoned, the petitioner has no case on merits. He has submitted that earlier Mr. Vaghabhai Chhelabhai, through whom the petitioner claims tenancy had made an application for entering his name as the tenant in case no. 39/80-81, however, the same has been withdrawn by the said Shri Vaghabhai Chhelabhai on 18th May, 1995. He has further submitted that pending proceeding before the Revenue Tribunal, the respondent no. 1 has decided to gift away the said land to a Trust for which an application has also been made to the concerned authority.

I do not agree with Mr. Dave that because the petitioner has no case on merits, the present petition should be dismissed. I find the reasoning adopted by the Tribunal to be strange. There was no reason for the Tribunal to disbelieve the statement made by the petitioner. Besides, it is always in the interest of justice to decide the matter on merits unless there were gross and negligent delay. On the facts and in the circumstances of the case, I am of the view that the delay caused in preferring Revision Application ought to have been condoned. The Tribunal ought to have heard the Revision Application on the merits of the case.

In the result, the petition is allowed. The impugned judgment and order dated 19th February, 2001 passed by the learned Gujarat Revenue Tribunal in Revision Application No. TEN.B.A 344/2000 is quashed and set-aside. The delay caused in preferring the said

Revision Application is condoned. The Revision Application is remanded to the Tribunal for hearing and decision on merits. Rule is made absolute to the above extent. The parties shall bear their own costs.

[Miss R.M Doshit, J.]

Prakash*